U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DWAYNE C. LEWIS and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

Docket No. 99-2547; Submitted on the Record;
Issued July 5, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in its May 18, 1999 decision in denying merit review of appellant's claim.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly denied merit review in its May 18, 1999 decision.

The Office accepted appellant's claim for a temporary aggravation of a paranoid personality disorder with secondary depression as well as a temporary aggravation of a Dysthymic disorder. The record reflects that he is no longer employed by the employing establishment. Appellant has been receiving compensation since July 12, 1991.

By decision dated April 9, 1998, the Office terminated benefits, stating that the evidence of record established that there was no relationship between appellant's current medical/psychological condition and the accepted work-related stresses. The Office found that the medical opinion of Dr. Howard J. Entin, a Board-certified psychiatrist and independent medical examiner, dated February 3, 1998, constituted the weight of the evidence and established that appellant's work-related disability had ceased.

By letter dated April 6, 1999, appellant, through counsel, requested reconsideration and submitted a September 30, 1997 vocational evaluation report which was previously of record. In its decision dated May 18, 1999, the Office denied appellant's reconsideration request, finding the April 6, 1999 letter and accompanying evidence and legal arguments were of a repetitious and irrelevant nature and therefore was insufficient to warrant merit review.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.[1] As

[1] *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

appellant filed the appeal with the Board on August 11, 1999, the only decision properly before the Board is the May 18, 1999 decision, denying appellant's request for reconsideration.

Pursuant to 20 C.F.R. § 10.138(b)(1) in effect on June 5, 1998 and 20 C.F.R. § 10.606 in effect on January 6, 1999, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent new evidence not previously considered by the Office.[2] Formerly at section 10.138(b)(2), section 10.608(a) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[3] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[4] Evidence that does not address the particular issue involved does not constitute a basis for reopening the case.[5]

In the present case, the September 30, 1997 vocational evaluation report is repetitive as it was already submitted in the record and was part of the evidence of record at the time the April 9, 1998 termination decision was issued. In his April 6, 1999 letter, appellant does not contest the termination of appellant's benefits. Instead he argues that the Office had prematurely placed appellant in vocational services since he was not at maximum medical improvement from his work injury until April 3, 1998, which caused appellant to fail in the vocational rehabilitation services. Appellant contends that the Office should now allow appellant vocational benefits since he has recovered from the work injury and his postal employment has terminated. This argument is irrelevant as it does not address the relevant issue in this case, whether the Office properly terminated appellant's compensation. Moreover, as the Office properly noted, the Office cannot, by law and regulation, offer vocational services to someone whose work-related disability has ceased and when all benefits under the program, including vocational rehabilitation, have been terminated.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error or clearly unreasonable exercise of judgment.[6] Accordingly, as appellant's April 6, 1999 reconsideration request was properly found lacking in new and relevant evidence or legal arguments pertinent to the issue in this case, it therefore is insufficient to warrant modification.[7] The Board finds that the Office properly denied appellant's application for reconsideration of his claim.

[2] 20 C.F.R. § 10.606(b)(2) (1999). *See generally* 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.608(a) (1999).

[4] *Howard A. Williams,* 45 ECAB 853 (1994).

[5] *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

[6] *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[7] 20 C.F.R. § 8128(a)(3).

The decision of the Office of Workers' Compensation Programs dated May 18, 1999 is hereby affirmed.

Dated, Washington, DC
July 5, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member